



Sales Tax Information

for Sales, Installation and Repair of Tangible Personal Property Attached to Real Property

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Introduction

This publication provides tax information relating to sales, installation and repair of tangible personal property attached to real property. General sales and use tax information is available in Publication 25.

Tax Commission publications are reference tools. They are not all-inclusive and should not be used as legal references.

Tax laws may change due to legislative action. Changes to law will supersede any information in this publication.

Real Property

Construction materials and fixtures are considered converted to real property when used in the construction of buildings or improvements on real property. Construction materials, such as bricks, lumber, nails, cement and other items, typically lose their separate identity as personal property once incorporated into real property. Fixtures are items of tangible personal property, such as furnaces, built-in air conditioning systems, built-in appliances, hot water heaters, water softener systems, water filtration systems, sinks and tubs. Although these items do not lose their separate identity upon installation, they become an integral part of the real property improvement.

Gas, water, and electrical supply lines serving the manufacturing equipment are viewed as real property because these systems usually also serve the general needs of the property where the manufacturing equipment is housed. For instance, the electrical system that runs the manufacturing equipment is usually part of the system that turns on the lights and runs the office computers. The system is an integral part of the real property and it is treated as real property for sales tax purposes. However, if separate service is installed solely for the operation of the equipment and operated through a separate meter that is evidence the system is an accessory to the equipment rather than a part of the real property.

Utility lines or pipelines are generally considered real property if installed underground or permanently attached over ground. Taxability of purchases of other public or private utility line or pipeline materials should be determined on the basis of ap-

plicable tests in Administrative Rule R865-19S-58 indicating whether such materials constitute real property upon installation to the realty or remain tangible personal property.

Buildings are considered real property if they are permanently attached to real property, such as a concrete foundation. Buildings that can be moved without substantial damage either to the structure or the underlying real property are deemed not affixed to the land and are considered personal property. Even if buildings are rarely, if ever, moved, they remain personal property unless they are affixed to the land.

An item installed to serve the trade or business may be considered part of real property if the building is specially adapted to accommodate the item. For instance, a grocery store is designed and specifically built to accommodate refrigeration cases set into troughs built into the floor. As another example, a building may be specifically designed to accommodate a hydraulic hoist that can be withdrawn beneath the floor when not in use.

Who Must Pay or Collect Sales Tax?

A seller who sells items of tangible personal property to the final consumer must collect sales tax on the sale, but sellers may be confused about who the final consumer is when the item will be converted to real property.

A furnish and install contract is a contract under which a seller not only sells tangible personal property to a purchaser, but in addition, installs or subcontracts the installation of that tangible personal property to real property. Sellers are considered to have subcontracted the installation if they directly pay the third party installers for the work performed. Under a furnish and install contract, the seller converts the tangible personal property into real property and, as such becomes a real property contractor. The contractor is the last person to own the materials as tangible personal property, whether the property is installed by the contractor or someone working for and paid by the contractor. The contractor is responsible for paying sales tax on his purchase of the materials from the supplier. Accordingly, the transaction between the contractor and the ultimate purchaser of the real property improvement is not taxable. On the other hand, if the property owner purchases the construction materials directly from the supplier for use by a third party contractor, it is the property owner and not the contractor who is liable for the sales tax. The following examples illustrate the difference.

- A homeowner hires a contractor to remodel his basement. Under a furnish and install agreement, the contractor purchases all building materials and installs them as part of the basement construction. The contractor must pay sales or use tax on the purchase of the building materials because the contractor is the last one to own the items before they are converted to real property. The contractor, in turn, sells the finished real property improvement to the customer. Since sales of real property improvements are not taxable, the contractor's charge to the homeowner is not taxable.
- A homeowner hires a contractor to remodel his basement. Under their agreement, the homeowner purchases all building materials and makes them available for use by the contractor. The homeowner must pay sales or use tax on the purchase of the building materials.
- A seller sells and installs storm doors. The seller also sells the doors to homeowners for do-it-yourself installation. In the first instance, a furnish and install contract, the seller is acting as a real property contractor because he/she converts the door

to real property. A real property contractor must pay sales or use tax on the purchase of the door, but charges to the homeowner are not taxable. In the second instance, the seller may purchase the door tax free for resale, and must collect sales tax when the door is sold directly to the homeowner.

- A seller who sells and installs wall-to-wall carpet is acting as a real property contractor and is liable for the sales tax on the purchases of materials installed. In the absence of evidence to the contrary, wall-to-wall carpet, once installed, is considered part of the real property because it is particularly adapted to the structure and it is generally affixed in a manner that suggests it will remain in place over its useful life. If the seller sells the carpeting to the homeowner for installation by the homeowner, or some other party acting on behalf of the homeowner, the sale is taxable to the homeowner. Carpet tiles become part of real property after their installation and should receive the same tax treatment as sales of wall-to-wall and broadloom carpet. Unattached floor coverings such as throw rugs or oriental carpets remain tangible personal property.

In each of these examples, the seller or contractor is responsible for the sales or use tax on the purchase of an item the seller sells and installs.

Purchases of Construction Materials for Resale

A seller may purchase construction materials for resale tax free and collect sales tax from the end consumer if the items are sold as tangible personal property. If construction materials are purchased tax free for resale, then converted to personal use or converted to real property under an installation contract, the purchaser must accrue and remit sales or use tax on the purchase price of the item. Some sellers engage in both types of transactions. Recall the previous example of the seller who sells and installs storm doors, but also sells the doors directly to a customer for installation by someone else. If this seller purchases all of the doors tax free, sales tax must be paid on the purchase of the doors the seller installs and converts to real property. Tax must be accrued on the purchase of the doors and remitted with the sales tax return. Additionally, sales tax must be collected and remitted on the sale of any doors sold directly to the end customer.

Tax Commission Rule R865-19S-58 governs the sale of construction materials.

Incorrect Seller Practices

A seller that sells tangible personal property under a furnish and install contract may not:

1. collect sales tax on that tangible personal property;
2. offset the sales and use tax the seller owes on its own purchase of the tangible personal property by any sales tax the seller inappropriately collected on the sale of that property; or
3. show the tax due on the seller/installer's purchase of construction materials (or any amount labeled as tax, computed at the current tax rate, or that otherwise appears to be tax) as a separate item on an invoice or contract provided to the customer.

A seller that inappropriately collects sales and use tax on property sold under a furnish and install contract is required by Utah law to remit that tax to the Tax Commission, unless the tax is refunded to the purchaser.

Tangible Personal Property Permanently Attached to Real Property

The rules stated above do not apply to sales of items that remain tangible personal property even when attached to real property. The sale of an item which remains tangible personal property, even when affixed to real property, is taxable to the last purchaser.

Tangible personal property is classified as permanently attached to real property if the attachment is essential to use the tangible personal property, and the tangible personal property will remain attached over its useful life. This includes attaching an accessory to the tangible personal property if it is essential to the operation of the tangible personal property and is attached solely for that purpose. This classification is further supported if detachment would cause substantial damage to the tangible personal property, or detachment would require substantial alteration or repair of the real property. The permanently attached tangible personal property retains its classification even if it is temporarily detached for repair or renovation onsite.

The permanently attached classification does not include attaching portable or movable tangible personal property for convenience, stability, or for an obvious temporary purpose, or detachment for repair or renovation other than onsite.

Also excluded from this classification is a refrigerator, washer, dryer, stove, television, computer or telephone if the attachment to real property is only through a line that supplies water, electricity, gas, telephone or cable.

Some examples of items that remain tangible personal property even when permanently attached to real property are:

- A TV antenna or satellite dish does not become an integral part of the real property, even if attached to the purchaser's home and even if its wiring is dropped inside the house. These are the kinds of items a property owner may remove from the premises upon sale of the property unless the seller and buyer agree it remains with the property. If a homeowner purchases a satellite dish or antenna, sales tax is due on the homeowner's purchase, even if the seller installs the item.
- Sales of qualifying manufacturing machinery and equipment are treated as sales of tangible personal property, even if the machinery or equipment is affixed in some fashion to real property. Sales of accessories essential to the manufacturing equipment and machinery, and sales of repair parts are also considered sales of tangible personal property. A person who meets the statutory definition of manufacturer can purchase or lease manufacturing equipment tax free upon delivering an exemption certificate to the seller. Qualifying replacement equipment is eligible for an exemption.
- Trade fixtures are items that benefit the trade or business conducted on the property. Unlike the real property fixtures discussed above, trade fixtures tend to be transient in nature. That is, the trade fixtures installed on commercial property may vary from one tenant to another without substantial alteration of the building, and the building itself is readily adaptable to multiple uses. For instance, assume a retail space in a strip mall is leased for use as a dress shop. The dress shop owner will likely install dress racks. If the same space is later leased for use as a shoe store, the

dress racks will be replaced by shoe display racks. Neither the dress racks nor the shoe racks are an integral part of the underlying realty. Other examples of trade fixtures include barber chairs, dental chairs and physician tables.

- Above-ground tanks attached to real property unless so attached to the real property that they become real property.
- Property attached to oil, gas, or water pipelines.

Installation of the Item

Charges for labor to install an item of tangible personal property to real property are not subject to tax. This is true even if the item is not actually converted to real property. The exemption for installation charges only applies if the charges are separately stated on the invoice. The following examples illustrate this point:

- An installer sets up of a piece of manufacturing equipment and screws it into the floor. Although the connection may not be sufficient to convert the equipment to realty, the equipment is installed in connection with real property and the installation charges are exempt if separately stated. If the equipment is merely plugged into an electrical outlet, the connection to the real property is not sufficient for purposes of this exemption.
- A dealer sells and installs a satellite dish. The dish is installed by affixing it to the customer's home and running wire into the house. Although the satellite dish is not converted to real property, charges for labor to install an item to real property are not taxable if separately stated. In this case, the sale of the dish is taxable (because it is a sale of tangible personal property), but the labor charges associated with installation are not subject to tax.
- A dealer sells and installs insulation on above ground pipes that are attached to real property but are not part of the real property. Because the above ground pipes are permanently attached to real property, the charges for the installation are not taxable, if separately stated on the invoice. The charges for the sale of the insulation are subject to tax.

Charges to fabricate a finished item of tangible personal property are taxable and must be included in the amount upon which tax is calculated. For example, construction materials are assembled to create a prefabricated section of fence that will be sold through a home improvement center. The finished prefabricated section is an item of tangible personal property and the sales tax is calculated on the total sales price of the finished prefabricated section, including labor and materials.

Tax Commission Rule R865-19S-51 governs fabrication.

Repair of the Item

Sales tax applies to charges for labor and parts to repair an item of tangible personal property. If the item has been affixed to real property so as to become permanently attached to the real property, the separately stated labor charges associated with the repair are not taxable. However, charges for the repair parts are taxable. Examples include:

- A repairman services a refrigeration case that serves as a built-in meat counter in a grocery store. It is affixed by its attachment to the building and intended to remain in place over its useful life. In fact, the building was specifically engineered to accommodate the case. To move or remove it will result in substantial remodeling or repair to the building. Charges for labor to repair the case are not taxable. However, the repairman must collect sales tax on charges to the customer for repair parts.

- If an item is permanently attached to real property, its accessories are also treated as permanently attached if they are essential to the operation of the item and installed solely to serve the operation of the item. The compressor, control panels, water supply lines and electrical supply lines that serve the case are also treated as permanently attached to real property. The repairman treats the entire system as a unit.
- An item attached to real property may be temporarily detached from real property for on-site repairs without losing its classification. If the item is removed from the site, it reverts to tangible personal property and off-site repairs are taxable. Referring again to the example of the refrigerated meat case, if the repairman temporarily detaches the case from the floor for an on-site repair, labor charges are non-taxable. If the case must be removed from the site and repaired off-site (e.g. in the repairman's shop), the repair is considered a repair to tangible personal property and the entire charge for parts and labor is taxable.
- A repairman services a portable refrigeration case in a grocery store. The store manager positions the case in an aisle near an electrical outlet. It may be shifted easily from place to place as the need arises, but when used it is screwed into the floor so it will not fall or move. The case is not permanently attached and charges for labor to repair it are taxable. The repairman must collect sales tax on charges to the customer for repair parts.

Washing or Cleaning of the Item

Sales tax applies to charges for washing or cleaning of tangible personal property including tangible personal property permanently attached to real property. Charges for cleaning and washing of real property are not subject to tax.

Sales of Construction Materials to Government Agencies and Religious or Charitable Organizations

See Tax Commission Rule R865-19S-58.

Sales of construction materials made directly to an agency of the federal government are exempt from sales tax if the federal agency makes direct payment to the seller.

Sales of construction materials to an agency of the State of Utah or a local political subdivision of the State of Utah (such as a county or city) are exempt from sales tax if the agency makes direct payment to the seller and the items are converted to real property by employees of the government entity. The purchaser must complete an exemption certificate for the seller's tax records. No exemption is allowed for purchases by government entities of other states or countries.

Sales of construction materials to public schools or qualified religious or charitable organizations are tax exempt if purchased directly by the organization or purchased by a contractor on behalf of the organization. A contractor purchasing such materials should provide the material supplier an exemption certificate, form TC-721. The certificate must identify the contractor as the purchaser claiming the exemption and the section "Construction Materials Purchased for Schools or Religious and Charitable Organizations" must be completed. In the case of an audit, the contractor must be able to show through the contract, purchasing systems, job costing systems, etc. that the items purchased tax-free under the exemption certificate have been incorporated into the realty of the exempt institution.

These types of purchases by these entities may be confusing because there are actually two tax exemptions at work. The exemption for construction materials (items that will be converted to real property upon installation) described above allows the contractor to make the purchase on behalf of the institution. This exemption does not extend to items purchased by the institution that remain tangible personal property even when affixed to real property. Such items may be purchased tax free by the exempt entity, so long as they are purchased directly by the institution and not the contractor. Consider the following examples:

- The public school enters an agreement with a contractor to add a wing to the existing building. Under the agreement, the contractor will purchase and install all building materials, including lockers and two display cases that will be installed in the hallway of the addition. For purposes of this example, assume the addition is specially designed with a recess in the wall to accommodate the permanent attachment of built-in lockers and built-in display cases. In this example, the lockers and the display cases are items that will be converted to real property upon installation and the contractor may purchase them tax free on behalf of the school.

An exemption certificate must be completed by an authorized representative of the school or organization or by the contractor authorized to purchase construction materials on behalf of the school or organization.

- A public school needs more lockers to accommodate its increasing pupil population, so it asks a contractor to install two rows of free-standing lockers in the foyer. These lockers are not converted to real property upon installation. Therefore, they are not considered exempt construction materials that can be purchased by a contractor on behalf of the school. However, a contractor with a sales and use tax license may purchase the lockers tax free under the resale exemption and then sell them tax free to the school under the exemption for sales to government entities. The contractor must give a completed resale exemption certificate to the locker vendor and obtain a completed exemption certificate, purchase order, check or voucher from the school as evidence of the exemption.

Tax Commission Rule R865-19S-78 governs sales tax on tangible personal property permanently attached to real property.

Sales tax publications provide general guidance only. They do not contain all sales or use tax laws or rules. If you need additional information, call (801) 297-7705 or 1-800-662-4335, ext. 7705 (outside the Salt Lake area), or email taxmaster.utah.gov.

Examples

The following table contains examples to help you better understand the distinction between taxable charges for sales, installation and repair.

Item	Sale of Items & Repair Parts	Installation or Set-Up Charges	Repair Labor Charges
Overhead crane (industrial plant)	Treat as sale of personal property taxable to the property owners as final purchaser unless the crane is installed as part of the building construction process and the building is specially adapted to its use. In these cases, treat as construction materials.	Taxable unless the building itself is specially designed to accommodate the crane.	Taxable unless the building itself is specially designed to accommodate the crane.
Construction crane	Treat as sale of personal property taxable to the final purchaser.	Taxable	Taxable. The item is not designed to remain at one site over its useful life.
Printing press	Treat as sale of personal property taxable to the final purchaser.	Taxable	Taxable
Underground tank installed under "sell and install" contract	Treat as construction materials taxable to the contractor.	Nontaxable	Nontaxable
Underground tank sold for installation by someone other than the seller or the seller's installer	Treat as personal property taxable to the purchaser.	Nontaxable	Nontaxable
Auto teller machine (ATMs)	Treat as construction materials taxable to the contractor if incorporated into the building. Freestanding ATM machines are treated as personal property and are taxable to the final purchaser.	Nontaxable if incorporated into the building. Taxable if freestanding or attached merely for stability or convenience.	Nontaxable if incorporated into the building. Taxable if freestanding or attached merely for stability or convenience.
Lockers	Lockers built into the recess of a wall specially built to accommodate them are treated as real property. Freestanding lockers are treated as personal property.	Nontaxable if incorporated into the building. Taxable if freestanding or attached merely for stability or convenience.	Nontaxable if incorporated into the building. Taxable if freestanding or attached merely for stability or convenience.
Portable building	Treat as real property taxable to the contractor if permanently attached to a foundation. Treat as personal property taxable to the final purchaser if freestanding or left on wheels or skids.	Nontaxable if attached to a foundation, pad or real property.	Nontaxable if attached to a foundation, pad or real property. Taxable if left on wheels, skids or freestanding.
Lathe (manufacturing facility)	Treat as personal property taxable to the final purchaser.	Taxable	Taxable
Theater seats	Treat as real property taxable to the contractor if attached as part of the construction process and if building is specially designed to accommodate the seats.	Nontaxable if affixed.	Nontaxable if the building was specially adapted to accommodate the seating and the manner of attachment suggests the seating is intended to remain in the same place over its useful life.
Conveyor belt (manufacturing facility)	Treat as personal property taxable to the final purchaser.	Taxable	Taxable
Safety deposit boxes	A bank of safety deposit boxes built into a recess in the wall is treated as real property taxable to the contractor.	Nontaxable if affixed to the building. Taxable if freestanding.	Nontaxable if built into the building. Taxable if freestanding.

Item	Sale of Items & Repair Parts	Installation or Set-Up Charges	Repair Labor Charges
Bank vault	Treat as real property taxable to the contractor unless freestanding.	Nontaxable if built into the building or if the building is specially constructed to accommodate the vault. Taxable if freestanding.	Nontaxable if built into the building or if the building is specifically constructed to accommodate the vault. Taxable if freestanding.
Elevators	Treat as real property and taxable to the contractor.	Nontaxable	Nontaxable
Cable TV lines	Generally treat as real property of the cable company (like utility lines).	Nontaxable	Nontaxable
Dock leveler	Treat as real property and taxable to the contractor if constructed as part of the dock and the dock is part of realty. Treat as personal property and taxable to the final purchaser if merely fastened or attached to the dock after the fact.	Nontaxable if attachment suggests that the leveler is a permanent affixture and attached in a manner that suggests it will remain in place over its useful life. Taxable if merely fastened or attached to the dock after the fact.	Nontaxable if attachment suggests the leveler is a permanent affixture and attached in a manner that suggests it will remain in place over its useful life. Taxable if merely fastened or attached to the dock after the fact.
Restaurant oven/grill	Built-in appliances are treated as real property fixtures and taxable to the contractor. Freestanding appliances are treated as personal property taxable to the final purchaser.	Nontaxable if built-in appliance. Taxable if freestanding or attached merely for stability or convenience.	Nontaxable if built-in appliance. Taxable if freestanding or attached merely for stability or convenience.
Oil drilling rig	An oil well casing is treated as real property, but a drill rig designed to be moved from one location to another is treated as personal property taxable to the final purchaser.	Taxable	Taxable
Hot tub	If permanently built into the building or the ground, it is treated as real property and taxable to the contractor. Treat as personal property taxable to the final customer if portable or freestanding.	Taxable unless permanently incorporated into the building, such as a tub recessed into the floor.	Taxable unless permanently incorporated into the building, such as a tub recessed into the floor.
Automated pool cover	In the case of an in-the-ground pool, the automated cover is treated as real property if built in and specially adapted to the pool. A portable pool cover or a cover for an unattached, above-ground pool is treated as personal property taxable to the final purchaser.	Nontaxable if the cover is built in and specially adapted to an in-the-ground pool and affixture is necessary for the proper operation of the cover.	Nontaxable if the cover is built in and specially adapted to an in-the-ground pool and affixture is necessary for the proper operation of the cover.
Wall-to-wall carpet	Treat as real property taxable to the seller, if sold under furnish-and-install contract. If sold to the buyer for installation by someone other than the seller or someone working on the seller's behalf, treat as personal property taxable to the final purchaser.	Nontaxable	Nontaxable
Above-ground pipes that are permanently attached	Treat as personal property and taxable to the final purchaser.	Nontaxable if attached to the well.	Nontaxable if attached to the well.
Residential Gas Stove	Treat as sale of personal property taxable to the property owner as final purchaser.	Taxable	Taxable

Item	Sale of Items & Repair Parts	Installation or Set-Up Charges	Repair Labor Charges
Residential Gas Barbeque	Treat as sale of personal property taxable to the property owner as final purchaser.	Taxable	Taxable
Residential Gas Dryer	Treat as sale of personal property taxable to the property owner as final purchaser.	Taxable	Taxable
Residential Refrigerator with Ice Maker	Treat as sale of personal property taxable to the property owner as final purchaser.	Taxable	Taxable
Custom made blinds and shutters installed by the seller (blinds or shutters fitted to the interior of the window opening that cannot be moved to another window and cannot be resized.)	Treat as sale of real property.	Nontaxable	Nontaxable
Window coverings, draperies and rods	Treat as sale of personal property taxable to the property owner as final purchaser.	Nontaxable if installation charges are separately stated.	Nontaxable if installation charges are separately stated.
Commercial Ice Machine at a Convenience Store	Treat as sale of personal property taxable to the property owner as final purchaser.	Taxable unless attachment, other than water supply, is essential to the operation of the machine and the manner of affixation suggests it is intended to remain in the same place over its useful life.	Taxable unless attachment, other than water supply, is essential to the operation of the machine and the manner of affixation suggests it is intended to remain in the same place over its useful life.
Commercial Gas Dryer at a Laundromat	Treat as sale of personal property taxable to the property owner as final purchaser. Dryers built into the recess of a wall specially built to accommodate them are treated as real property.	Taxable unless attachment, other than gas supply, is essential to the operation of the dryer and the manner of affixation suggests it is intended to remain in the same place over its useful life.	Taxable unless attachment, other than gas supply, is essential to the operation of the dryer and the manner of affixation suggests it is intended to remain in the same place over its useful life.
Commercial Gas Stove in a Restaurant	Treat as sale of personal property taxable to the property owner as final purchaser. Stoves built into the recess of a wall specially built to accommodate them are treated as real property.	Taxable unless attachment, other than gas supply, is essential to the operation of the stove and the manner of affixation suggests it is intended to remain in the same place over its useful life.	Taxable unless attachment, other than gas supply, is essential to the operation of the stove and the manner of affixation suggests it is intended to remain in the same place over its useful life.
MRI Machine in a Hospital	Treat as sale of personal property taxable to the property owner as final purchaser.	Nontaxable if attachment, other than power supply, is essential to the operation of the machine and the manner of affixation suggests it is intended to remain in the same place over its useful life.	Nontaxable if attachment, other than power supply, is essential to the operation of the machine and the manner of affixation suggests it is intended to remain in the same place over its useful life.
Hot water heaters	Treat as real property taxable to the seller, if sold under furnish-and-install contract. If sold to the buyer for installation by someone other than the seller or someone working on the seller's behalf, treat as personal property taxable to the final purchaser.	Nontaxable	Nontaxable